

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Criminal Action No. 3:06-CR-08-2
(BAILEY)**

DARRYL F. CLINKSCALE,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation ("R&R") of United States Magistrate Judge David J. Joel [Doc. 381], filed November 28, 2011. In that filing, the magistrate judge recommends that this Court dismiss the United States Probation Office's Petition for Warrant or Summons for Offender Under Supervision [Doc. 371] for insufficient probable cause that the defendant violated a condition of supervised release. Magistrate Judge Joel further recommends that the defendant be released on the previously entered terms of his supervised release with the addition of one term requiring substance abuse and anger management counseling and another prohibiting driving under the influence of alcohol.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R&R were due on December 15, 2011, pursuant to 28 U.S.C. § 636(b)(1). To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.


Upon careful review, it is the opinion of this Court that the magistrate judge's Report and Recommendation **[Doc. 381]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. As such, this Court hereby **DISMISSES** the United States Probation Office's Petition for Warrant or Summons for Offender Under Supervision **[Doc. 371]** for insufficient probable cause that the defendant violated a condition of supervised release. Therefore, this Court **ORDERS** that the defendant be released on the previously entered terms of his supervised release with the addition of the following two terms:

1. The defendant shall attend substance abuse and anger management counseling with Dr. Anita Ryan; and
2. The defendant shall not drink alcohol while driving and shall not drink alcohol prior to driving.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record.

DATED: December 21, 2011.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE